

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Transfer of Inbound Market Dominant
Express Service Agreement 1, Inbound
Market Dominant Registered Service
Agreement 1, Inbound Market Dominant
PRIME Tracked Service Agreement,
Australian Postal Corporation - United
States Postal Service Bilateral Agreement,
and Canada Post Corporation - United
States Postal Service Bilateral Agreement
Negotiated Service Agreements to the
Competitive Product List

Docket No. MC2020-73

PUBLIC REPRESENTATIVE COMMENTS

(January 3, 2020)

On December 13, 2019, the Postal Service filed a request pursuant to 39 U.S.C. §3642 and 39 CFR 3020.30 *et seq.* to transfer five negotiated service agreements (NSAs) from the market dominant product list in the Mail Classification Schedule (MCS) to the competitive product list.¹ The Commission then issued a public Notice and Order on December 17, 2019.²

¹ United States Postal Service Request to Transfer the Inbound Market Dominant Express Service Agreement 1, Inbound Market Dominant Registered Service Agreement 1, Inbound Market Dominant Prime Tracked Service Agreement, Australian Postal Corporation – United States Postal Service Bilateral Agreement, and Canada Post Corporation – United States Postal Service Bilateral Agreement to the Competitive Product List, December 13, 2019 (Request).

² Notice and Order Concerning Transfer of Market Dominant Negotiated Service Agreements to the Competitive Product List, December 17, 2019 (Order No. 5354).

I. BACKGROUND

In Docket No. MC2019-17, the Commission conditionally approved the transfer of Inbound Letter Post small packets and bulky letters from the market dominant product list to the Competitive product list and the addition of Inbound Competitive Registered Mail to the Competitive Registered Mail component of the International Ancillary Services product on the competitive product list.³ The Commission conditioned its approval on the proposal, approval, and implementation of new prices. *Id.*

In that docket, the Postal Service stated that it was seeking to limit the scope of its request “to volume that is currently subject to UPU default rates.”⁴ It also noted that “[t]he MCS provisions that relate to the Australia Post bilateral, the Canada Post Corporation bilateral, and the three PRIME agreements would likely be the subject of a future transfer if this docket is favorably reviewed.” *Id.*

The Request asserts that the proposed transfer meets all the requirements set forth in 39 U.S.C. §§ 3642 and 3622 as well as those of 39 C.F.R. §§ 3020.31-32.

In support of its statement that the Request fulfills the conditions for transfer outlined in section 3642⁵, the Postal Service points out that the Commission already issued a finding regarding compliance in Order No. 4980. There, the Commission found that:

³ Docket No. MC2019-17, Order Conditionally Approving Transfer, January 9, 2019 (Order No. 4980) at 23.

⁴ Docket No. MC2019-17, United States Postal Service Request to Transfer Inbound Letter Post Small Packets and Bulky Letters, and Inbound Registered Service Associated with Such Items, to the Competitive Product List, November 16, 2018 at 4 n.7.

⁵ 39 U.S.C. § 3642(b)(1) provides that a product cannot be transferred from the market dominant product list to the Competitive product list if the Postal Service exercises sufficient market power over the product such that it can effectively set the price of the product substantially above costs, raise prices significantly, decrease quality or output, without risk of losing a significant level of business to other firms offering similar products.

[t]he Postal Service does not exercise ‘sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.’ See 39 U.S.C. § 3642(b)(1). Thus, the market power provisions of 39 U.S.C. § 3642(b)(1) do not prevent the transfer of Inbound Letter Post small packets and bulky letters, and associated registered mail services, to the competitive category.

Order No. 4980 at 14.

The Postal Service states that the three PRIME agreements, the Australia Post bilateral, and the inbound portions of the Canada Post bilateral should similarly satisfy the criteria of 3642(b)(1), stating that “[p]ursuant to Paragraph 13 of Article 17-166 of the Universal Postal Convention, which concerns exchange of format-separated mails, for operational, statistical, and accounting purposes, registered and tracked items are treated as bulky letters (E) or small packets (E) and therefore the tracking and registered services provided under the three PRIME agreements and the Australia Post bilateral are applicable to Inbound Letter Post Small Packets and Bulky Letters items.” Request at 12. The Postal Service also asserts that all of the inbound portions of the Canada Post bilateral currently included in the market dominant product list concern Inbound Letter Post Small Packets and Bulky Letters items. Therefore, according to the Postal Service, the Commission’s findings in Order No. 4980 should apply to all NSAs in the current Request. In its Statement of Supporting Justification, the Postal Service goes on to state that the relevant NSAs are not covered by the postal monopoly, that there are ample private sector competitors engaged in delivery of the relevant NSAs, that users of the relevant NSAs are likely to support the continued availability of the products after transfer, and that small business concerns are unlikely to be affected by the transfer of the relevant NSAs. Request, Attachment 1 at 5-7.

Pursuant to 39 U.S.C. § 3633 and 39 C.F.R. § 3020.32(c), competitive products may not be subsidized by market dominant products and each competitive product must cover its own costs as well as collectively contribute an appropriate share of the Postal Service's institutional costs. The Request asserts that all the relevant NSAs satisfy the above criteria. Request at 13-14.

Additionally, the Postal Service states that the Request fulfills the requirements set forth by 39 C.F.R. §§ 3020.31-32 regarding the request and supporting justification.

II. DISCUSSION

The Public Representative agrees that a transfer of the five NSAs that are the subject of the transfer request would not conflict with 39 U.S.C. § 3642(b)(1). The Commission has previously determined that the Postal Service does not exercise sufficient market power over Inbound Letter Post small packets and bulky letters, such that it can effectively set the price of substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products. The five NSAs set out negotiated prices for E-Format items, the same type of items that make up Inbound Letter Post small packets and bulky letters. Therefore, if the market power provisions of 39 U.S.C. § 3642(b)(1) do not prevent the transfer of Inbound Letter Post small packets and bulky letters to the competitive category, then they should not prevent the transfer of the five NSAs.

Similarly, with regard to Inbound Letter Post small packets and bulky letters, the Commission found that that the Postal Service adequately considered private sector competitors, the views of customers, and small business concerns; and that the transfer was justified under 39 U.S.C. § 3642(b)(3). As the five NSAs involve items with the same characteristics as Inbound Letter Post small packets and bulky letters, the Public

Representative finds that the transfer of the five NSAs is also justified under 39 U.S.C. § 3642(b)(3).

Pursuant to 39 U.S.C. § 3633(a), the Postal Service's competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service.

Based upon a review of the financial workpapers as well as the financial workpapers filed in Docket No. ACR2019,⁶ the Public Representative finds that the prices in the three PRIME agreements and the Australia Post bilateral agreement should generate sufficient revenues to cover cost and therefore meet the requirements of 39 U.S.C. § 3633(a). Additionally, adding the inbound portions of the Canada Post bilateral included in the market dominant product list to the inbound portions of the Canada Post bilateral currently included in the competitive product list should not cause the Canada Post bilateral competitive product to fail to cover cost. Consequently, the transfer of the five NSAs would not cause market dominant products to subsidize competitive products nor prevent competitive products from collectively contributing the appropriate share of the institutional costs of the Postal Service as determined by the Commission.

III. CONCLUSION

The five NSAs meet all the criteria necessary to make the transfer to the competitive product list permissible. The Public Representative recommends that the Commission approve the Postal Service's request to effectuate the transfer of the five

⁶ See Docket No. ACR2019, Library Reference USPS-FY19-NP2, December 27, 2019.

NSAs at the same time as the transfer of Inbound Letter Post small packets and bulky letters to the competitive product list occurs.

Respectfully submitted,

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